

IN THE UNITED STATES DISTRICT COURT **FILED**
FOR THE DISTRICT OF NEW MEXICO UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

ERIK CARTER,

Plaintiff,

vs.

ARIZONA PUBLIC SERVICE COMPANY,

Defendant.

No. _____

04 JUL -9 PM 4: 22

CLERK-ALBUQUERQUE

CIV - 04 - 0776 JB/LFG

NOTICE OF REMOVAL

Defendant Arizona Public Service Company ("APS"), through its attorneys, Eaton Law Office, P.C., hereby respectfully submit this Notice of Removal for the purpose of removing the above-entitled action from the Eleventh Judicial District Court for the County of San Juan, State of New Mexico, to the United States District Court for the District of New Mexico, and as grounds therefore states:

1. APS is named as a defendant in a civil action commenced against it by Plaintiff in the Eleventh Judicial District Court for the County of San Juan, State of New Mexico, entitled *Erik Carter, Plaintiff vs. Arizona Public Service Company, Defendant*, which is number No. CV2004-499-1 on the docket of that Court.

2. Defendant first received notice of this action upon receipt of a copy of the Summons and Complaint, which were served on APS on June 9, 2004. Copies of the Summons and Complaint are attached to this Notice of Removal as Exhibit A. A copy of the Service of Process Transmittal Form from CT System to APS is attached as Exhibit B.

3. Upon inquiry by Defendant's counsel, no further state court proceedings have occurred or are scheduled in this matter.

4. This action is being removed to federal court because Plaintiff alleges that he is a resident of the State of New Mexico. Defendant Arizona Public Service Company is an Arizona corporation with its principal place of business in Arizona. There is also complete diversity in this matter. The Complaint fails to specify the amount of compensatory and other damages claimed. However, counsel for Plaintiff has advised counsel for APS that Plaintiff contends that his damages are greater than \$75,000, and Plaintiff will seek more than \$75,000 in damages at trial. The United States District Court for the District of New Mexico, therefore, also has original jurisdiction over this cause pursuant to 28 U.S.C. §1332 because it is a civil action between citizens of different states and the amount in controversy is in excess of \$75,000. *See Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 2001) (stating "the amount in controversy is ordinarily determined by the allegations of the complaint, or, where they are not dispositive, by the allegations in the notice of removal.").

5. The state court in which this action was commenced is within this Court's district and division. Therefore, this action is properly removable to this Court under 28 U.S.C. §§ 1441(a) and 1446.

6. Undersigned counsel consents to this removal on behalf of defendant to this cause of action.

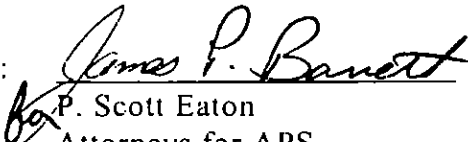
7. Defendants will serve and certify service of copies of this Joint Notice of Removal to Plaintiff, as required by 28 U.S.C. § 1446(d).

8. A copy of this Joint Notice of Removal will be filed with the Office of the Clerk of the Eleventh Judicial District Court for the County of San Juan, State of New Mexico, as required by 28 U.S.C. § 1446(d).

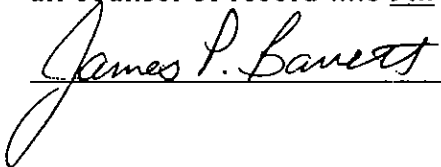
WHEREFORE, Defendant prays that the above-captioned action now pending against it in the Eleventh Judicial District Court for the County of San Juan, State of New Mexico, be removed to this Court.

Respectfully submitted this 9th day of July 2004.

EATON LAW OFFICE, P.C.

By: 
P. Scott Eaton
Attorneys for APS
P.O. Box 25305
Albuquerque, New Mexico 87125-5305
Tel: 505-243-1486

I HEREBY CERTIFY that a true and correct copy of this pleading was mailed to all counsel of record this 9th day of July 2004.



ELEVENTH JUDICIAL DISTRICT COURT
COUNTY OF SAN JUAN
STATE OF NEW MEXICO

No. CU 2004-499-1

ERIK CARTER,

Plaintiff,

vs.

ARIZONA PUBLIC SERVICE COMPANY,

Defendant.

SUMMONS

TO: Arizona Public Service Company
c/o its registered agent
CT Corporation Systems
123 E. Marcy Street
Santa Fe, New Mexico 87501

Defendant, Greeting:

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff(s) will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys for Plaintiff: Bradford K. Goodwin, 220 Ninth St., NW, ABQ, NM 87102

WITNESS the Honorable WELDON J. NEFF, District Judge of said court of the State of New Mexico and the Seal of the District Court of said County, this 30 day of May, 2004.

WELDON J. NEFF

CLERK OF THE DISTRICT COURT

(SEAL)

By: Loretta Cla

Deputy

NOTE: This summons does not require you to see, telephone or write to the District Judge of the Court at this time.

It does require you or your attorney to file your legal defense to this case in writing with the Clerk of the District Court within 30 days after the summons is legally served on you. If you do not do this, the party suing may get a Judgment by default against you.

EXHIBIT

A

RETURN

STATE OF NEW MEXICO)
) SS.
COUNTY OF)

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY:

I certify that I served the within Summons in said County on the _____ day of _____, 2004, by delivering a copy thereof, with copy of Complaint attached, and a form for Answer, in the following manner:

RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE:

I, being duly sworn, on oath, say that I am over the age of 18 years and not a party to this lawsuit, and that I served the within Summons in said County on the _____ day of _____, 2004, by delivering a copy thereof, with copy of Complaint attached, and a form for Answer, in the following manner:

(check one box and fill in appropriate blanks)

() To Defendant _____, (used when Defendant receives copy of Summons, is read Summons or Complaint or refuses to receive Summons or hear reading.)

() To _____, a person over 15 years of age and residing at the usual place of abode of Defendant _____, who at the time of such service was absent therefrom.

() By posting a copy of the Summons and Complaint in the most public part of the premises of Defendant _____ and mailing a copy of this Summons and Complaint to the Defendant at his last known mailing address. (used if no person found at dwelling house or usual place of abode.)

() To _____, an agent authorized to receive service of process for Defendant _____.

() To _____, (parent) (guardian) of Defendant _____. (used when Defendant is a minor or an incompetent person.)

() To _____, _____
name of person title of person authorized to receive service

(used when Defendant is a corporation or association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision.)

Fees:

SIGNATURE OF PRIVATE CITIZEN MAKING SERVICE

SHERIFF OF _____ COUNTY

Subscribed and sworn to before me this day of _____, 2004.

By _____
DEPUTY

JUDGE, NOTARY OR OTHER OFFICER
AUTHORIZED TO ADMINISTER OATHS

TITLE

FILED
DISTRICT COURT
SAN JUAN COUNTY
NM

2004 MAY -3 A 11:51

ELEVENTH JUDICIAL DISTRICT COURT
COUNTY OF SAN JUAN
STATE OF NEW MEXICO

No.

ERIK CARTER,

Plaintiff,

vs.

ARIZONA PUBLIC SERVICE COMPANY,

Defendant.

COMPLAINT FOR PERSONAL INJURIES

COMES NOW the plaintiff, by and through his attorneys of record, Fine Law Firm (Bradford K. Goodwin), and for his complaint states that:

1. Plaintiff Erik Carter is a resident of San Juan County, State of New Mexico.
2. The defendant, Arizona Public Service Company, is an Arizona corporation and at all material times owned and operated the Arizona Public Service Four Corners Power Plant in San Juan County, State of New Mexico.
3. This cause of action arises from an accident which occurred at the Arizona Public Service Four Corners Power Plant on April 18, 2002.
4. The plaintiff was severely injured in the April 18, 2002, accident.

5. On April 18, 2002, at approximately 5:15 p.m., while acting in the course and scope of his employment for Riley Industrial Services, Inc., the plaintiff was engaged in a job involving sandblasting inside the Unit 1 boiler.

6. At the time of the accident, the plaintiff was on scaffolding which had been supplied by the defendant.

7. At the time of the accident, the defendant provided inadequate lighting in the area where the plaintiff was working.

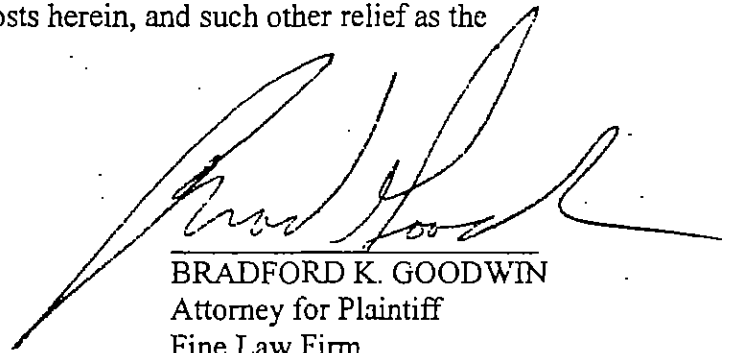
8. The accident and injury occurred when the plaintiff fell off the scaffolding due to defects in the scaffolding, which included, but were not necessarily limited to an uneven surface on the scaffolding, and the absence of protective railings around the scaffolding which would have prevented the fall off of the scaffolding.

9. The accident and injuries occurred as a direct and proximate result of the defendant's negligence.

10. The negligence of the defendant includes, but is not necessarily limited to, failure to provide adequate lighting; failure to provide adequate and safe scaffolding for the job; and, failure to properly inspect the scaffolding before use.

11. As a direct and proximate result of the defendant's negligence, the plaintiff sustained severe injuries which include, but are not limited to, past and future pain and suffering, past and future medical bills, lost wages, impairment, and possible loss of future earnings capacity.

WHEREFORE, plaintiff respectfully requests a reasonable award of damages from the defendant, his/her costs herein, and such other relief as the Court deems proper.

A handwritten signature in black ink, appearing to read 'Bradford K. Goodwin', is written over a horizontal line.

BRADFORD K. GOODWIN
Attorney for Plaintiff
Fine Law Firm
220 Ninth St., NW
Albuquerque, NM 87102
(505) 243-4541



CT System

Service of Process Transmittal Form
Santa Fe, New Mexico

06/09/2004

Via Federal Express (Overnight)

TO: Kris Fenex Paralegal
ARIZONA PUBLIC SERVICE COMPANY
400 N. 5th St.
Station 8695
Phoenix, AZ 85004

Answer Due: 7/9/04
Claims: Dave Miller

RE: PROCESS SERVED IN NEW MEXICO

FOR ARIZONA PUBLIC SERVICE COMPANY Domestic State: Az

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

1. TITLE OF ACTION: ERIK CARTER, PLAINTIFF vs ARIZONA PUBLIC SERVICE COMPANY, DEFENDANT
2. DOCUMENT(S) SERVED: SUMMONS, COMPLAINT, CERTIFICATE OF SERVICE, PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS PLAINTIFF'S INTERROGATORIES, (2 COPIES EACH)
3. COURT: ELEVENTH JUDICIAL DISTRICT COURT, SAN JUAN COUNTY, NEW MEXICO
Case Number CV-2004-499-1
4. NATURE OF ACTION: DAMAGES FOR PERSONAL INJURY
5. ON WHOM PROCESS WAS SERVED: CT Corporation System, Santa Fe, New Mexico
6. DATE AND HOUR OF SERVICE: By Process server on 06/09/2004 at 14:30
7. APPEARANCE OR ANSWER DUE: 30 DAYS
8. ATTORNEY(S): BRADFORD K. GOODWIN
220 NINTH ST. NW
ALBUQUERQUE, NM 87102

9. REMARKS:

SIGNED CT Corporation System
PER Supervisor of Process
ADDRESS 123 East Marcy Street
Santa Fe, NM 87501
SOP WS 0006365807

Information contained on this transmittal form is recorded for C T Corporation System's record keeping purposes only and to permit quick reference for the recipient. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information that can be obtained from the documents themselves. The recipient is responsible for interpreting the documents and for taking the appropriate action.

EXHIBIT

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